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Opinion #71

March 3, 1958

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James J. Barry, Commissioner
Department of Public Welfare
State House Annex
Concord, New Hampshire

CONCORD, N.H.

Dear Mr. Barry:

This is in response to your request of February 25 for our opinion as to whether judges of probate are state or county officials. Since they are paid by the State (RSA 547:22 (Supp) and are appointed by the Governor and Council (N.H. Const. Pt. 2, Art. 46) they are, in our opinion, State officials.

In discussing this question with OASI Assistant Robert Schaffer of your office it was indicated that should we rule that the judges of probate are State officials, that a further opinion should be given on whether they are salaried or fee-basis employees. In the OASI Handbook, Section 209, it is provided that:

"A position compensated for in part by fees and in part by salary is generally considered a fee-basis position if the position is established in such a manner that fees constitute the primary source of compensation."

We have examined the reports filed by probate judges with the Secretary of State for the year 1957. Five of the judges had reported. In each case compensation from salary exceeded that from fees. The salaries of the probate judges range from \$3,000 to \$4,600 (RSA 547:22 Supp). We are of the opinion that these officers are salaried rather than fee-based.

Very truly yours,

Elmer T. Bourque
Assistant Attorney General

ETB/m